



May 23, 2001

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2001-2126

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147582.

The Dallas Police Department (the "department") received a request for a copy of service number 06453-U and arrest number 87-80145, as well as any and all supplements and documents pertaining to these reports. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. You also indicate that you seek to withhold a portion of the requested information under section 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common law privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. Accordingly, you must withhold the information you have marked as identifying information

of the victim in this case, as well as additional identifying information we have marked, pursuant to common law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We note that section 552.130 protects the privacy of the individual to whom the information relates. Here, the Texas driver's license number, license plate number and vehicle identification number contained in the submitted information appear to be those of the requestor or his automobile. Section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Because section 552.023 provides the requestor a special right of access to his section 552.130 information, the department must release the requestor's Texas driver's license number, license plate number and vehicle identification number to him.

Finally, we note that the submitted information contains social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, because the protections in the federal Social Security Act are meant to protect privacy, you must release to the requestor his social security number. Gov't Code § 552.023.

To summarize, you must withhold the information you have marked as identifying the victim of a sexual assault in this case, as well as additional identifying information we have marked, pursuant to common law privacy and section 552.101. Texas driver's license numbers, vehicle identification numbers, and license plate numbers appearing in the requested information must be withheld under section 552.130, except those of the requestor, which must be released to him. Any social security number obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990 must be withheld under section 552.101, except that of the requestor, which must be released to him. The remainder of the requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 147582

Encl. Submitted documents

cc: Mr. Daniel Cruz
1085 Whispering Glen
Rockwall, Texas 75087
(w/o enclosures)